



### GENESIS OF PATENT: AN INSIGHT OF INTELLECTUAL PROPERTY RIGHTS THEORIES

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#### Abstract

*Intellectual property is the property which has been created by exercise of intellectual faculty. India has a long history of protection of Intellectual Property Rights through a system of well developed substantive laws and established legal and administrative practice. It has a well developed structure for the enforcement of Intellectual property rights. The importance of patent system for stimulating inventions, research and development of the country is well recognized in India. The progress and prosperity of a nation depends upon the level of scientific, industrial and technological development.*

*The main purpose of the researcher in this paper is to put some light on the genesis of patent which the researcher has tried to put forward by discussing the theories of Intellectual Property Rights in detail and depth. Various theories like labour theory, inventive theory, schumpeterian theory, metaphysical theory have been vital in the development of intellectual property laws in India and abroad.*

**Keywords:** Intellectual Property, Patent, Invention.

#### Introduction

Intellectual property law is essentially a system to introduce and encourage the industrial production and commercial activities by remunerating the initiator of ideas incorporated in products and assuring value to the investment made in the entities used to manufacture or create those products. The intellectual property rights are private rights and in essence pertain to individuals, yet in practice, these rights are being exercised more and more by corporate entities such as firms, business, corporations and other institutions. Theoretically, intellectual property is justified under two counts first that the creator of knowledge is entitled to the fruits of his or her labour and secondly to

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encourage production of information through economic reward. Patent laws are a unique category of laws that provides for protection of an invention. These laws are sum total of rights as well as duties-available to the patentee, i.e. the method by which something is produced or achieved. Our technology will only be available to the public if the inventor is satisfied that his invention will not be copied. To protect this misuse, a legal sanction has to follow such invention. Patent is the instrument that provides this legal sanction.

The jurisprudence behind patent laws is also evident in Roscoe pound's journal postulate where he says man must be able to assume that they may control for beneficial purposes what they have discovered and appropriated for their own use, what they have created with their own labour and what they have acquired under existing social and economic order<sup>2</sup>. Thus in order to dissect this concept let us magnify the concept through the concept of property and its theories.

### Concept of Property

Property is a word which has always had a very close link with the society. The importance of property has been well recognized since the development of human civilization. The word 'property' is rich with meanings. The term has been defined and explained time and again by a number of jurists. In order to study the concept of property the Latin word 'proprius' and Sanskrit word 'swatva' needs some elaboration.<sup>3</sup> The Sanskrit word 'swatva' used for property by Indian philosophers, is a noun decided from the word 'swa' meaning self with suffix 'tva' therefore it means property of one's own self. The Latin word proprius means what one owns.<sup>4</sup> A person's property is thus anything owned by that person. A property may be tangible or intangible, movable or immovable, corporeal or incorporeal, a material or an abstract one. The Bhagwat geeta also divided property into two forms daivi (devine) and asur (demon)<sup>5</sup>. But the persons with property had always enjoyed social respect and recognition in olden times in the same way as they do in the modern world. Thus over the ages, therefore, the term property has been looked upon as a concept full of diverse views. Sometimes, it may mean ownership or title and at others, the right over which ownership is to be exercised.

<sup>2</sup> W. Friedman, *Legal Theory* 250 (Vth Ed, 1999).

<sup>3</sup> J.P. Mishra, *An Introduction to Intellectual Property Rights*, 2 (2012).

<sup>4</sup> Concise Oxford Dictionary 285 (1982).

<sup>5</sup> Supranote 1 at p.4.

According to Salmond, property in its broadest sense includes all legal rights and in its narrowest sense it means the corporeal property.<sup>6</sup> A property may be chiefly of two kinds corporeal and incorporeal.

Corporeal property is the proprietary right in rem or jura in re-propria over material things eg. land and chattels. Where a person owns the res (i.e. thing) he is said to have a jura in re-propria. It may be further classified as: moveable and immovable and real and personal.<sup>7</sup> As per section.3 of Transfer of Property Act, Immovable property means and includes a determinate portion of earth's surface, ground beneath the surface column of space over the surface, all objects on or under the surface in its natural state and all objects annexed permanently. Anything which can be severed from the surface of earth and moved becomes moveable property.

On the other hand Justinian, under the Roman law has divided actions into real and personal viz action in rem and actions in personam. If the intention behind action is to claim a title over a thing it is a real action or action on a thing. Such a property is real property. If the intention is based on claiming an obligation on a person, it is a personal action and property is classified as personal property.<sup>8</sup>

An Incorporeal property may be defined as a proprietary right in rem in all cases except when the rest is a material thing. It is of two kinds- Jura in re aliena and Jura in re-propria. Jura in re aliena means encumbrances or rights over things owned by another. These encumbrances may be either over material thing or immaterial thing like leases, mortgages, servitudes and securities etc. Jura in re-propria is a proprietary right over material or immaterial things. It includes things which may not be seen or touched like other material property, but can be owned, used, licensed etc. These immaterial things are the product of human skill and labour.<sup>9</sup> Indian jurist and philosophers have always made it clear that vidya that is knowledge is the greatest of all gifts man could make in favour of the other.<sup>10</sup> This type of property can thus be said to be self acquired property through Vidyadhana i.e. property over ideas and skills. In olden times in India, as well as in other civilization

<sup>6</sup> Salmond, *Jurisprudence* 411(1987).

<sup>7</sup> Supra note 1, at p.20.

<sup>8</sup> R.K. Nagrajan, *Intellectual Property Law*, 140 (2011).

<sup>9</sup> Supranote 8.

<sup>10</sup> Ibid.



commercialization of ideas and inventions was not popular but slowly and gradually this practice increased with the modern times. Some of the immaterial forms of property are

- (i) Patents
- (ii) Copyright
- (iii) Trademarks

Thus these forms of intellectual property are proprietary rights in intangible, incorporeal things which cannot be perceived but can be transferred like any other property.

### Theories of Property

#### Natural Theory

Every Jurist has tried to look into the philosophy underlying the concept of property. The natural theory of property goes with the concept that natural facts determine the nature and owner of property.<sup>11</sup> It treats the whole nature as a heritage to be shared equally by all human beings. The case of **Huddart v. Grimshaw**<sup>12</sup> goes with the concept of this theory when Lord Ellenborough states that, "in an invention there are some materials which are in common, and cannot be supposed to be appropriated in the terms of any patent. These are common elementary materials to work with in machinery, but it is adoption of those materials to the execution of any purpose that constitutes invention, if such combination in its nature is new, productive and beneficial to public, protected by king's patent, it ought to continue the sole right of vending it to that person but if it is already known, in that case he cannot claim patent."

#### Locke's Labour Theory

Another approach that dominated states that a person who labours upon resources that are either not owned or held in common has a natural property right to the fruits of his or her own efforts, and the state has a duty to respect and enforce that natural right. The labour of his body and work belongs to him. Whatsoever he removes out of state that nature had provided, and left in, he had

<sup>11</sup> Elizabeth Verkey, *Law of Patents* 5 (2005).

<sup>12</sup> Dav. Pat. Case. 265, 295 (K.B. 1803).



mixed his labour and joined to it something that is his own, and thereby makes it his own property.<sup>13</sup> The raw material is deemed to be held in common and the labour contributes to the value of finished products. It states that a person's productive work is the basis of property claim. The mere act of discovery does not establish property claim, but appropriation of discovered good to some further purpose implies some elements of labour. The labour theory has assumed with regard to intellectual property. Intellectual labourer is entitled to own immediate fruits of his labour. The essential logic of Locke's property theory is: Labour is a mine and when I appropriate objects from the common I join my labour to them. You should not take the objects which I have gathered with my own labour.<sup>14</sup> The requirements of novelty also easily fit into the Lockean moral and political scheme that maintains an individual's right to his property.<sup>15</sup>

### Metaphysical Theory

Kant was the first jurist to pen down this theory followed by Hegel, Miller and others. Kant asserts about inviolability of individual human personality. There are three elements:<sup>16</sup>

- Prehension of an object which belongs to no one.
- An act of free will interdicting others from using it as theirs.
- Appropriation of the thing according to the universal law whereby all others are obliged to respect an act in conformity to the will of the appropriator with respect to the thing.

Thus summarizing Kant's theory of property, Roscoe Pound has inferred that it contains both idea of occupation and idea of compact.<sup>17</sup> Hegel was of the opinion that mankind has the absolute right to appropriate all that is a thing. When out of some special interest a man has something in his power, he is said to be in possession of the thing. Thus Hegel has emphasized more on possession. Intellectual property rights may be justified on the ground that they create social and economic conditions conducive to create intellectual activity, which in turn is important to human flourishing.

<sup>13</sup> Supra note 6 at p.6.

<sup>14</sup> Supra note 7 at p.7.

<sup>15</sup> Supra note 2 at p.9.

<sup>16</sup> Supra note 1 at p.32.

<sup>17</sup> Roscoe Pound, *An Introduction to the Philosophy of Law*, p. 119, Quoted in J.P. Mishra, *An Introduction to Intellectual property Right's* 32 (2012).

### Utilitarian Theory:

Another theory which tries to look at the concept of property with the eyes of utility was propounded by Jeremy Bentham, the pioneer of utilitarian jurisprudence. Property according to Bentham is entirely a work of law and adds that it is nothing but an expectation of deriving certain advantages which one is said to possess by virtue of the relation in which one stands with respect to the thing.<sup>18</sup> Property and laws are born together and die together. The main founding principle of intellectual property is "greatest good of the greatest number."<sup>19</sup> Right in this property is easily replicated and enjoyment of them by one person does not prevent enjoyment of them by other persons. A person has a right to enjoy what he has himself produced. Thus Bentham has always stressed on happiness of the society which consists of subsistence, abundance, equality and security.

### The Schumpeterian Theory

The principle of monopolies being conducive to innovation is generally associated with the work of Joseph Schumpeter. Schumpeter does not focus on technological innovations or patent system but his analysis suggests how patent monopolies promote innovations. He distinguished innovation from invention and observed that invention itself produces no economically relevant effect. Innovation on the other hand, brings about incessant revolutionary changes in the economic system.

In this process, new firms continually arise to carry out new innovations, driving out old firms that provide obsolete goods and services. Competition from new commodities and new technologies is more significant than price competition among firms offering similar goods and services.

### The Prospect Theory

Edmund Kitch offers a more elaborate analysis of the role of patents in post invention innovation in what he calls the "Prospect Theory" of patent protection. According to this theory, patent system promotes efficiency in the allocation of resources to the development of existing inventions by awarding exclusive, publically recorded ownership in new technological prospects

<sup>18</sup> Bentham, *Theory of Legislation*, Quoted in Elizabeth Verkey, *Law of Patents* 8 (2005).

<sup>19</sup> Ibid.





shortly after their discovery.<sup>20</sup> Kitch asserts that the patent monopoly is generally not limited to the primitive version of the invention described in the patent application but extends to subsequent refinements as well. Subsequent improved versions of the invention falling within the scope of patent claims and newly discovered uses for the invention, although the product of further research by others will still be subject to the control of the patent holder until the patent expires. The patent holder will therefore stand to benefit from subsequent research to improve the invention while other researchers will have little incentive to pursue further research on a patented invention without first arranging for a license to the said patent.<sup>21</sup> Thus, this feature of patent system tends to promote control over subsequent research on patented inventions by patent holders and their licenses.<sup>22</sup>

### Incentive Theory

The incentive theory is well illustrated by William Nordhaus classic treatment of patent law. He was mainly concerned with determining the optimal duration of a patent, but his analysis can be applied more generally. An increase in the duration or strength of patents stimulates an increase in inventive activity.<sup>23</sup> Ideally, patent duration or strength should be increased up to the point where the marginal benefits equal the marginal costs. In analyzing as to how patents promote scientific progress, the jurists have emphasized two mechanisms:<sup>24</sup> firstly the prospect of obtaining a patent monopoly provides an incentive to invest in research to make new inventions and secondly the patent system promotes disclosures of new inventions and thereby enlarges public store house of knowledge. The incentive to invent theory holds that very few inventions will be made in the absence of patent protection because inventions once made are easily appropriated by competitors of the original inventor who have not shared in the costs of invention.<sup>25</sup> If successful inventions are quickly imitated by free riders, competition will drive prices down to a point where inventor receives no return on original investment in research and development. Patents serve to bring private benefits of inventions in line with their social value by allowing inventors to use their monopoly positions to

<sup>20</sup> Supranote 7 at p.10.

<sup>21</sup> Supranote 13 at p.9.

<sup>22</sup> Ibid.

<sup>23</sup> Id.

<sup>24</sup> Supranote, p.9.

<sup>25</sup> Ibid.

extract a price.<sup>26</sup> Further the Incentive to innovate theory holds that the patent system achieves its objective by offering monopoly profits to lure the promote innovation. The incentive to invent and incentive to disclose theories are concerned with incentive that operates before patent issues. By contrast, the incentive to innovate theory gives existing patents an ongoing role in preserving the incentives of patent holder's to invest in development during patent term.

## Basic Concept of Intellectual Property

Nature has given the gift of intellect to human beings. In the earlier human civilization although man used to have intellect but the concept of property was unknown. After passage of time movables and chattels were recognized as property. Thus by involving intellect man started creating new ideas and things. The property which is created by man by involving his intellect is known as intellectual property. Intellectual Property Right is a very special category of rights involving incorporeal property right and is gaining immense importance these days. Intellect is a Latin word meaning perception i.e. knowing and reasoning,<sup>27</sup> thus human brain is considered to be the place where new ideas are conceived which may later on become the basis of creative work.<sup>28</sup> Intellectual property protects some of the finest manifestations of intellectual creations.<sup>29</sup> Rights are jus in re-propria over immaterial things. These rights are the legal rights protecting activities in industrial, scientific, literary and artistic fields. Intellectual property law aims at safeguarding creators and producers of intellectual goods, products and services by granting them certain time-limited right's to control the use of them.<sup>30</sup> These rights are generated in various forms such as inventions, books, statistical creations, performances, shapes, words and pictures. The individual who creates intellectual creations owns that like any tangible property. Thus intellectual property is owned by its owner by excluding all others.

Intellectual property was traditionally divided into two branches: Industrial property and copyright.<sup>31</sup> Industrial Property includes patents, trademarks, service marks, commercial names and

<sup>26</sup> Supra note 13.

<sup>27</sup> Concise Oxford Dictionary, 86 (1982).

<sup>28</sup> W.R. Cornish, *Intellectual Property: Patents, Copyright, Trademark and Allied Right* 3 (1996).

<sup>29</sup> Sople Vinod, *Managing Intellectual Property. The strategic Imperative* 3 (2006).

<sup>30</sup> J.K Das, *Intellectual Property Rights* 239(2008).

<sup>31</sup> P. Narayan, *Intellectual Property Law* 1(2006).





designations. Copyright related to work of art and related rights. The TRIPS(Trade Related Aspects of Intellectual Property Rights) Agreement however covers eight forms of intellectual property viz Copyright and Neighbouring Rights, Industrial Designs, Trademarks, Geographical Indications, Patent's Plant varieties, Layout Designs of Integrated circuits and Confidential Information.<sup>32</sup> Therefore, due to its vast and ever expanding scope its knowledge and understanding plays a very important role in national strategies for accelerating socio-economic development. As stated by Shahid Ali Khan, (Deputy Director General WIPO)

*"The intellectual property system is a factor to be reckoned with in the cause of technology transfer, technology development, industrial and economic progress, export trade, identifying new markets and their retention and in promotion of national inventive, innovative and creative activity."*<sup>33</sup>

### Types of Intellectual Property Rights

Intellectual Property is that property which is created by the involvement of intellect of its creator. In fiction it is a property thus it is minced as intellectual property. Intellectual Property Rights may be looked upon as proprietary rights over things intangible. They are rights which are jus in re propria.<sup>34</sup>

Intellectual Property in India is well established at all levels-statutory, administrative and judicial. The Agreement of Trades Related Aspects of Intellectual Property Rights (TRIPS) which came into force in 1995 gave minimum standards to be adopted by the members. India ratified the WTO agreements in December, 1994 and thus became a party to the TRIPS. In order to fulfill its commitment the government of India has introduced many changes in its existing Intellectual property laws. The following are the legislations covering intellectual property rights in India.<sup>35</sup>

- Patents-The Patent Act 1970 as amended by Patent Amendment Act, 1999, 2002 and 2005.
- Copyright-Copyright Act, 1957 as amended in 1983, 1984,1992,1994,1999 and 2012.
- Trademarks-The Trademarks Act 1999.
- Designs-The Designs Act, 1999

<sup>32</sup> Article 1(2) TRIPS Agreement.

<sup>33</sup> Intellectual Property and Socio Economic Development, "NIPO Souvenir, World IP Day" 43(April 11, 2013).

<sup>34</sup> Supra note 1, p.42.

<sup>35</sup> Supra note 27, p.74.



- Geographical Indications-The Geographical Indication of Goods (Registration and Protection) Act, 1999.
- Layout design of integrated circuits-The Semi conductor Integrated circuit Layout Design Act, 2000
- Plant varieties and farmers rights-The Protection of Plant Varieties and Farmer's Rights (PPVER) Act, 2001.
- Biological Diversity and Traditional knowledge Biodiversity Act, 2002
- Protection of undisclosed information- No exclusive legislations.

These legislations and amendments have come a long way in consolidation the laws relating to intellectual property rights in various areas. In India, patents, designs and trademarks are under the charge of Controller General of Patents, Designs and Trademarks is under the control of Department of Industries whereas Copyright is under the charge ministry of Human Resource Development.

The term copyright is derived from the expression “copier of words,” first used in 1586.<sup>36</sup> The subject matter of copyright is literary, artistic, dramatic, musical, cinematographic films, sound recordings. Literary works now also includes computer programmes, tables, compilation including computer data base.<sup>37</sup>

Copyright law in India now include right of author and music composer, right to visually impaired, extending compulsory regime to unpublished work and imposition of punitive actions.<sup>38</sup> It is an intangible, incorporeal right granted to the author or originator of certain literary or artistic work.

Trademark is a symbol through which goods are sold in the market. They have enormous value for an enterprise. It is a symbol which may denote and distinguish goods from competing traders. It may consist of single letter, numeral, logo, design, word pictorial or combination of words and devices. Section 2 of Trade mark Act defines the term as to mean a mark capable of being

<sup>36</sup> B.L. Wadehra, *Law Relating to Patent, Trademarks, Copyright, Design* 281(2000).

<sup>37</sup> Section 13 (1), Copyright Act 1999.

<sup>38</sup> Copyright (Amendment) Act, 2012.

represented graphically and which is capable of distinguishing the goods and services of one person from those of others and may include shape of goods, their packaging and combination of colours.

The term 'Design' has been defined under section 2 (d) of the Indian Designs Act, 2000. Design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms by any industrial process or means, whether, manual, mechanical or chemical, separate or combined, which in the finished article to and are judged solely by the eye. However, it does not include any mode or principle of construction or anything which is in substance a mere mechanical devise. The present Act provides only one form of protection of a design i.e through registration. A design to be registered must be new or original; it must be a design and must not be one excluded from registration.<sup>39</sup> Design rights are monopoly right like patent and copyright.

The term 'Geographical Indication' is of recent origin. The TRIPS Agreement included this term to the arena of Intellectual property rights under Article 22.1. Some geographical indications acquire a reputation for the quality of products in these regions over a period of time e.g. Agra Petha, Kanjeevarm silk saree, kullu shawl.<sup>40</sup>

When any such material acquires such a reputation, there may be attempts by others to use it for selfish motives of earning profits. These malpractices harm both the produces and their consumers. Thus the objective of this protection is to reduce or eliminate such unfair competition.<sup>41</sup> Indian Geographical Indication Act defines the term as, an indication which, identifies such goods as agricultural goods, natural goods or manufactured goods as originating or manufactured in that territory of a country, or region or locality in that territory where a given quality, reputation or other characteristic of such goods is essential attributable to its geographic origin and in case where such goods are manufacturing goods, one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region or locality, a the case, may be.<sup>42</sup> Recently the famous 'Pochampally' IKat tie and dye saree won intellectual property right

<sup>39</sup> Section 4 (a) Indian Designs Act, 2000.

<sup>40</sup> Supra note 27, p.185.

<sup>41</sup> Ibid.

<sup>42</sup> Jayashree Watal, *Intellectual property Right in the WTO and Developing Countries* 263(2002).



protection under GI Act benefitting nearly one lakh weavers in Andhra Pradesh, It is first traditional Indian craft to receive the status of geographical branding. This will protect pochmpally handloom saree from unfair competition.<sup>43</sup>

Semi conductor Integrated Circuit Layout Design Act, 2000 was another piece of legislation passed in accordance of TRIPS agreement to protect layout design of silicon chips, an integral part of computers and advanced electronic devices. This Act provides protection for semiconductor IC layout designs which includes layout of transistors and other circuitry elements and lead wires connecting such elements and expressed in semiconductor IC.<sup>44</sup> The Act offers protections to a layout that are original and distinctive from other layout designs and have not been commercially exploited. Term of protection is ten year.<sup>45</sup>

India is one of the first country in the world to have passed a legislation granting rights to breeders, farmers and researchers under the Protection of Plant Varieties and Farmers Rights Act , 2001 (PPVFR). Article 27.3 of the TRIPS Agreement required member's countries to protect plant varieties either by patents or by an effective sui generis system of protection. India opted for sui generis system. The Act Provides for intellectual property right protection on seeds of all agriculture crops, protects rights of plant breeders, option to deposit seeds in National Gene Bank and an exclusive right to produce, sell, market, distribute, import or export the variety.<sup>46</sup> This facilitated and promoted research and development in seed industry. The Union for the Protection of New Plant Varieties (UPOV) is an international forum set up to recognize plant breeder's rights globally. India is under negotiations to enter this new phase of protection of plant varieties.

The last category of Intellectual Property Rights is Biodiversity. The recognition and protection of indigenous people rights in their knowledge, innovation and practices relating to biodiversity is assuming an increasing urgency. To protect the traditional knowledge based usage of biodiversity, India has enacted Biological Diversity Act, 2002. The Act aims to ensure the conservation of biological diversity in India, sustainable use of its components and fair and equitable

<sup>43</sup> Ibid.

<sup>44</sup> Section 2 of the Layout Design Act, 2000.

<sup>45</sup> Ibid.

<sup>46</sup> Supra note 7, p.11.



sharing of the benefits arising out of the use of biological resources. The Act defines Biological resources as plants, animals and microorganisms or parts there of their generic material and by products with actual or potential use or value.<sup>47</sup> National Biological Authority (NBA) in force from October, 2003, regulates commercial and other uses of biodiversity. These were the various categories of Intellectual Property Rights protecting varied types of intellectual properties.

### What is Patent

Patent according to UN Secretary General's, report on the role of patents in transfer of technology means:<sup>48</sup>

*"A statutory privilege granted by the government to inventor and other persons deriving these rights from the inventor for a fixed period of years to exclude other persons from manufacturing, using or selling a patented product or process. After the expiry of term of patent, invention is available to the general public or falls in public domain," and anyone or everyone can exploit it.*

WIPO (World Intellectual Property Organization) has given the following description of a patent".<sup>49</sup>

*"A Patent is a legally enforceable right granted by virtue of a law to a person to exclude for a limited time, others, from certain acts in relation to a described new invention, the privilege is granted by a government authority, as a matter of right to the person who is entitled to apply for it and who fulfils the prescribed conditions"*

International Encyclopedia of social sciences also defines patent as a public document conferring certain rights, privileges, titles. The word derived from Latin word 'letters patent' is still in use in some states. A patent confers the rights to secure the enforcement power of the state in excluding unauthorized person for a specific number of years, from making commercial use of a clearly identified new and useful technological invention.<sup>50</sup>

<sup>47</sup> Section 2 of Biological Diversity Act, 2002.

<sup>48</sup> See report by the Secretary-General of UN entitled, "The Role of patent system in Transfer of Technology to Developing countries," 65(1964), Quoted in D.P. Mittal, *Patent Law and Procedure* 1(2002).

<sup>49</sup> Supranote 48.

<sup>50</sup> David L. Sills, International Encyclopedia of Social Sciences, (Vol.11), (1968), p.461. Quoted in P. Narayan, *Patent Law*, 1(2006).

### What is Patent?

A patent is an exclusive right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. The exclusive right is to manufacture the new article invented or manufacture an article according to the invented process for a limited period. During the term of the patent the owner of the patent i.e. patentee can prevent any other person from using the patented invention. After the expiry of the duration of patent anybody can make use of the invention. The invention then becomes part of the public domain. Thus patents are generally granted to inventions. Inventions include both tangible products as well as processes. The dictionary meaning of the term patent is, having an exclusive right and explanation says “a government grant to an inventor assuring him the sole right to make, use or sell his invention for a limited period”<sup>51</sup> According to Encyclopedia Britannica, ‘the term is applied in general usage to government grants of the exclusive right to make, use or sell a product or commodity. A patent according to UN charter, is, a statutory privilege granted by the government to the inventor for fixed term of years, to exclude others from manufacturing, using or selling patented product or utilizing patented method or process.’<sup>52</sup>

According to the statutory definition patent subsists<sup>53</sup> in any new and useful.

- (i) Art, process, method or manner of manufacture
- (ii) Machine, apparatus or other articles
- (iii) Substance produced by manufacture

The patent system provides the most reliable means of linking technological innovation with the development process of a country.<sup>54</sup> Now here technology means method by which something is produced or achieved and invention relate to technical problems which no one has previously realized or found.

Patents may be of various kinds depending upon subject matter or any other specialty attached to it. The former category includes product patent, process patent. Product patents are claims on product per se. It gives exclusive monopoly rights over a physical thing or product and over all possible uses

<sup>51</sup> Oxford English Dictionary (Vth Ed.), (1974) at p.890.

<sup>52</sup> D.P. Mittal, *Indian Patent Law and Procedure* 1(2002).

<sup>53</sup> Sec. 2 (J), Patent Act, 1970.

<sup>54</sup> Supranote 36, p.1.





of the product irrespective of the method through which it is produced.<sup>55</sup> A process patent on the other hand gives protection to specific process or method by which it is produced.<sup>56</sup> Process patent is granted for a process or method of production. There are the two main types of patent; however apart from this some other types are Patents of Additions granted to the owner to make some addition, alteration or improvement to his patented invention. Secret patents are patents granted to such inventions which are to be kept secret in the view point of security, safety and defense purpose. The application and documents<sup>57</sup> of such patent may be kept confidential. A patent which cannot be worked unless infringing an existing patent and patentee needs a license from the patent office to use existing patent is a dependent patent. Such a patent which cannot be exercised and needs the use of an earlier patent for its successful working is known as dependent patent. If the application of some advanced technology results in some other form of that patented product which is useful in some way or the other, one can get in some country, a patent for the said new configuration or design of patented product. Since the term of such patent is smaller than an independent patent, such protections are termed as petty patents. In India there is no protection either by way of petty patents. Trade Related Intellectual Property Rights has put the utility model system at par with patent protection.<sup>58</sup> Some countries like Canada, Chile, Peru also provide short term protection to an invention not to grant patent to anybody else during the short period for an invention relating to his field of research. This is known as precautional patent.<sup>59</sup>

Thus we conclude that patent as a type of intellectual property provides protection for a limited period to any product or process of making a product and includes within itself exclusive rights to manufacture, use and sell the property. It is a bundle of right and is transferable like any other property. Novelty, inventive step and industrial application are its basic features. The India Patent Act, 1970 as amended by Patent (Amendment) Act of 1999, 2002 and 2005 is the parent statute that covers all features and procedure relating to patents viz. Specification, Application, Compulsory Licenses, Patent office, Controller of Patents, Infringement of patents etc.

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<sup>55</sup> Supranote 1 at p.188.

<sup>56</sup> Ibid.

<sup>57</sup> Supranote 50, p.90.

<sup>58</sup> Supranote 19,192.

<sup>59</sup> Ibid.



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## Conclusion:

The term intellectual property refers to a loose cluster of legal doctrines that regulate the uses of different sorts of ideas and insignia. Intellectual property denotes the rights over a tangible object of the person whose mental efforts created it. There is no intellectual property in mere ideas. Only the particular expression of an idea is protected. Intellectual property provides rights of ownership in the product created by human intellect but not in the product itself.

A privilege is an instrument by which the sovereign affords a special right to an individual. These privileges contains special kinds of rights to beneficiary, particularly exemption from rules, taxes, allocation of land, interest free loans, naturalization or even titles of nobility. The reasons for granting them were also varied. The privileges granted for working of mining deposits are held to be forerunners of the industrial privileges. Intellectual Property system provides a boost to national wealth and contributes considerably to its sustainable development. Hence, there is a great economic value attached with promoting the use of the IP system and ensuring its effective protection. Protection of IPs is conducive to increased investment in the economies that provide for such protections. It also helps a nation to enhance its international trade. In general the economic value to IPRs depends on its competitive capability and scope for its enhancement and protection. Thus an intellectual property system helps in expanding a country's economic and trade programmes. Intellectual property rights enable countries to participate more actively in international trade and influences investment decisions. Industrial property documents, notably disclosure of inventions are a source of state of the art technological and commercial information, invaluable in the development of new technologies which could help developing countries to get the desired access to foreign markets. There is a growing recognition that the intellectual property system provides a balance of interests between the creators of new technologies, who often spend large money and resources in the creation and development of technology, and the users of that technology for whom it is quiet often an important tool for accelerating economic and industrial development.